HIGH COURT OF UTTARANCHAL AT NAINITAL.

Writ Petition no. 236(S/B) 2006

Dr. Rajendra Singh Kharayat,
S/o late Sri Dan Singh Kharayat,
Medical Officer In charge,
District Homeopathic Hospital, Uttarkashi. ----Petitioner.

Versus

1. Principal Secretary,
   Medical Health, Uttaranchal, Dehradun,
2. Director, Homeopathic Services,
   Uttaranchal Dehradun,
3. Dr. Karmanand Uniyal, Medical Officer,
   State Homeopathic Dispensary,
   Narendre Nagar,
   District Tehri Garhwal. ----Respondents.

Sri V.K. Bisht, Senior Advocate assisted by Sri Vipin Mohan Pingal, learned counsel for the petitioner.
Learned Standing Counsel for the State/respondents.

Coram:- Hon'ble M.M. Ghildiyal, J.
Hon'ble B.S. Verma, J.

Oral Order (Hon'ble M.M. Ghildiyal, J.)

Heard Sri V.K. Bisht, learned Counsel for the petitioner and learned Standing Counsel for the State of Uttaranchal/respondents.

2. By the present writ petition, the petitioner has prayed for the following reliefs:-

(i) Issue a writ, direction or order in the nature of certiorari by quashing the order dated 21.06.2006 (annexure no. 5 to the writ petition) passed by the respondents no.1,

(ii) Issued a writ, direction or order in the nature of mandamus directing the respondent no. 1 to consider and decide the representation of the wife of the petitioner date 27.06.2006 in accordance with the transfer policy 2006 and guidelines of the department,

(iii) Issue any suitable writ, order or direction which this Hon'ble Court may deem fit and proper in the circumstances of the case,

(IV) Award the cost of writ petition to this petitioner.

3. Vide order dated 21st June 2006 passed the Principal Secretary, Medical Health, State of Uttaranchal, the petitioner who was working as In-charge Medical Officer (Homeopathic) at district hospital, Uttarkashi has been transferred to Govt. Homeopathic Hospital, Narendra Nagar, district Tehri Garhwal. The petitioner has assailed the impugned order on the ground that the transfer has been made against the transfer policy issued by the State of Uttaranchal, as under the transfer policy, normally a person should not be transferred without being completed three years' service at one place.

4. Learned Standing counsel has submitted that the petitioner has been serving in the district Uttarkashi for the last 16 years.

5. The second ground of assailing the impugned order is that according to the transfer policy of the State, an option should be invited for at least three places from the person concerned who is likely to be transferred. In the present case, since the Medial Officer has also indicated the Directorate that no person is staying for more than three years, the petitioner has not given option for the places where he may be transferred.

6. It appears that the petitioner has not completed three years in the district hospital at Uttarkashi, However it is not disputed, that he is staying in the district hospital, Uttarkashi for about 16 years. Learned counsel for the petitioner has further submitted that the person who is posted at district hospital in the district of Tehri Garhwal, is junior to him and since the person posted at district hospital has

drawing/ disbursing and other administrative power in pursuance of Govt. order dated 8th November 1996, the petitioner though senior to the person, has not been assigned drawing/ disbursing and other administrative powers owing to that he has been posted at a dispensary at Narendra Nagar. He has further submitted that the petitioner is working in Class- I scale and he should have been transferred at district hospital, as usual practice opted by the State while making posting of the doctors. (Homeopathic).

7. Learned counsel for the petitioner has further submitted that the District Magistrate, Uttarkashi has also recommended the case of the petitioner to the Govt. for retaining the petitioner at district Uttarkashi.

8. The law of transfer has been settled down by the Apex Court in a catena of decisions. A person holding a transferable post cannot claim any vested right to work at a particular place as the transfer does not affect any of his legal rights and Court cannot interfere with a transfer order passed in public interest of administrative exigency. It is a normal incident of service, which, of course, should not be used arbitrary or mala-fide or infraction of any professed norm of principal governing the transfer. The transfer order can be interfered with by the Courts only where it comes under the category of frequent transfer; for example, if a person has been transferred more than once within a short span of period because in that case a transfer of an employee is an abuse of power by the Govt. except in exceptional circumstances where the public interest warrants such transfers. If a transfer is made in mid session without there being any public interest, the Court can interfere. Similarly, where the transfer order has been passed mala-fide or

the transfer order has been passed on the dictate of some other official, without applying mind by the Competent Authority, the Court can interfere in such cases.

9. Learned counsel for the petitioner has submitted that the impugned order has been passed by the respondents in violation of guidelines issued by the State of Uttaranchal itself. Learned Standing Counsel has submitted that the guidelines do not have statutory force. It is true that the guidelines issued by the State do not have statutory force, but since the guidelines have been issued by the State to be followed it is expected from the Govt. to follow the guidelines.

10. In view of the aforesaid we are not inclined to interfere with the transfer order. However we direct the petitioner to make a representation raising all his grievances, before the competent authority i.e. the respondent no.1 within a period of two weeks from today and it is expected that the respondent shall take decision on the representation of the petitioner within a period of two weeks from the date of receipt of a certified copy of this order alongwith the representation. While taking decision on the representation, the respondent shall pass a speaking order.

11. With these directions, the writ petition is finally disposed of. No order as to costs.

(B.S. Verma, J.) **(M.M. Ghildiyal, J.)**

July 26, 2006:
NCM: